

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22

Labor Laws

Subject: 22.3

Equal Employment Opportunity Requirements

PURPOSE: This standard practice (SP) describes the equal employment opportunity (EEO) requirements for Laboratory subcontracts.

POLICY: The Laboratory will include EEO related clauses in its solicitations and subcontracts, as applicable.

SCOPE: This SP applies to all subcontracts.

DEFINITIONS:

Affirmative Action Program An affirmative action program is a subcontractor's program to ensure equal employment opportunity to minorities and women, in compliance with Department of Labor (DOL) regulations.

Equal Opportunity Clause The *Equal Opportunity* Clause is FAR Clause 52.222-26, *Equal Opportunity*.

United States The United States, as used in this SP, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

PROCEDURES:

General

The EEO requirements include the following:

- Compliance with Executive Order (EO) 11246, as amended, and the related rules, regulations, and orders of the DOL;
- Compliance with the *Vietnam Era Veterans' Readjustment Assistance Act of 1972*, the *Veterans Employment Opportunities Act of 1998*, Executive Order 11701, and related DOL regulations requiring government contractors and subcontractors to take affirmative action to employ and advance in employment, qualified special disabled veterans and veterans of the Vietnam Era without discrimination based on their disability or veterans status;
- Compliance with the *Rehabilitation Act of 1973*, as amended, Executive Order 11758, and related DOL regulations requiring government contractors and subcontractors to take affirmative action to employ and advance in employment and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability;
- Inclusion of EEO-related clauses in all solicitations and subcontracts; and
- Actions with respect to any subcontract as the DOE contracting officer may direct as a means of enforcing the EEO requirements, including sanctions for noncompliance.

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Representations and Certifications

Solicitations — All solicitations exceeding the small purchase limit must include the following representation and certification clauses, if the subcontract is expected to include the *Equal Opportunity* Clause:

All Solicitations - Include the:

- *Previous Contracts and Compliance Reports* clause (FAR 52.222-22), unless for performance on an Indian Reservation.
- *Compliance with Veteran's Employment Reporting Requirements* clause (FAR 52.222-38), if the solicitation is not for acquisition of commercial items.

Solicitations Other Than Construction – Also include the:

- *Affirmative Action Compliance* clause (FAR 52.222-25), unless for performance on an Indian Reservation.

Review of Representations — The prospective subcontractor's representations must be reviewed to determine whether the subcontractor is in compliance with the EEO requirements. The prospective subcontractor should be requested to clarify any questions regarding the representations.

Subcontractor Compliance Reporting

A Laboratory subcontractor whose subcontract includes the *Equal Opportunity* Clause is required to file annual compliance reports, on Standard Form 100 (EEO-1), on or before September 30, and to have a written affirmative action program for each of its establishments within 120 days from the award of the subcontract, if it has:

- 50 or more employees, and
- A government contract or first-tier subcontract of \$50,000 or more.

If a prospective subcontractor for a subcontract expected to include the *Equal Opportunity Clause*, represents in the *Previous Contracts and Compliance Reports* clause (FAR 52.222-22) that it has not filed all required compliance reports, or in the *Affirmative Action Compliance* clause (FAR 52.222-25) that it does not have an affirmative action program, the procurement specialist must determine the reason.

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1. If the prospective subcontractor advises that it has less than 50 employees or does not have a government contract or first-tier subcontract subject to the *Equal Opportunity* clause, no further action is necessary. However, if the prospective subcontractor has more than 50 employees and the Laboratory subcontract will be over \$50,000, the procurement specialist must notify the subcontractor in writing of its obligation to file compliance reports and/or to develop an affirmative action program, as applicable.
2. If the prospective subcontractor advises that it has 50 or more employees and has a government contract or first-tier subcontract subject to the *Equal Opportunity* clause, the procurement specialist must notify DOE in writing of the prospective subcontractor's noncompliance with the EEO requirements. Unless the prospective subcontractor has been suspended, debarred, or proposed for debarment (see SP 9.2, *Debarment, Suspension, and Ineligibility*), award of the subcontract need not be withheld.

Subcontract Clauses

The terms and conditions of paragraphs (b)(1) through (11) of the *Equal Opportunity* clause (FAR 52.222-26) shall be included in all written subcontracts that are not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended; except for subcontracts for work that will be performed outside of the United States by employees who were not recruited within the United States.

The following clauses shall be included in all written subcontracts that include the *Equal Opportunity Clause*, as indicated:

- *Prohibition of Segregated Facilities* (FAR 52.222-21);
- *Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction* clause (FAR 52.222-23), with the minority and female participation goals inserted), if the subcontract is for construction in excess of \$10,000;
- *Affirmative Action Compliance Requirements for Construction* clause (FAR 52.222-27), if the subcontract is for construction in excess of \$10,000;
- *Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans* (FAR 52.222-35), if the subcontract is for \$25,000 or more or is for commercial items of any dollar level;
- *Affirmative Action for Workers With Disabilities* (FAR 52.222-36), if the subcontract is in excess of \$10,000 or is for commercial items of any dollar level;

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- *Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans* (FAR 52.222-37), if the subcontract is for \$25,000 or more; and

The following clause shall be included in all written subcontracts unless the performance, and the recruitment of any workers therefore, will occur entirely outside the United States:

- *Subcontracts for Commercial Items* (FAR 52.244-6).

Note: These clauses are incorporated by reference in the sets of General Provisions or included in the subcontract forms.

EEO Poster

A subcontractor whose subcontract includes the *Equal Opportunity* clause must be furnished the *Equal Employment Opportunity is the Law* poster or instructed to download the poster from the following web site:

<http://www.dol.gov/esa/> (select "Poster").

Subcontractor Inquiries

Inquiries from subcontractors regarding their compliance with Executive Order 11246 should be referred to the regional office of the Office of Federal Contract Compliance Programs (OFCCP).

Complaints and Compliance

Complaints received alleging subcontractor violation of the EEO requirements must be immediately referred to DOE, for further referral to the regional office of the OFCCP. The OFCCP has the authority to exercise administrative sanctions and penalties against subcontractors found to be in violation. Such actions may include:

- Publication of the name of the subcontractor or its unions;
- Cancellation, termination, or suspension of all or portions of the subcontract;
- Debarment from future government contracts or subcontracts; or
- Referral to the Department of Justice or to the Equal Employment Opportunity Commission for the institution of appropriate civil or criminal proceedings.

Upon notification by DOE and as directed by the Procurement Manager, the procurement specialist shall take the necessary steps to implement as soon as possible any enforcement actions or sanctions imposed on a subcontractor by the DOL for violation of any EEO-related laws, rules, regulations, or orders.

Enforcement actions and sanctions may include withholding funds from payments otherwise due, termination or suspension of the subcontract, or debarment of the subcontractor.

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RESPONSIBILITIES:

**Procurement
Specialist**

The procurement specialist shall:

- Include the equal opportunity and affirmative action clauses in written solicitations and subcontracts, as applicable;
- Review offerors' responses to the representations and determine if the offerors are eligible for an award;
- When appropriate, notify subcontractors of their requirement to develop a written affirmative action program and file compliance reports; and
- Implement sanctions imposed on a subcontractor by the DOL.

REFERENCES:

Prime Contract Clause I.24, Equal Opportunity

Prime Contract Clause I.26 – Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

Prime Contract Clause I.27 – Affirmative Action for Workers With Disabilities

Prime Contract Clause I.28 – Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

Prime Contract Clause I.50 – Subcontracts for Commercial Items